

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

RICHARD WILCOXON,	)	
	)	
Plaintiff,	)	C.A. No.05-524 (SLR)
v.	)	<b>JURY TRIAL DEMANDED</b>
RED CLAY CONSOLIDATED	)	
SCHOOL DISTRICT BOARD OF	)	
EDUCATION, and JANAY FREEBERY,	)	
	)	
Defendants.	)	
	)	

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**APPENDIX TO PLAINTIFF'S ANSWERING BRIEF IN SUPPORT OF  
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

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Dated: July 13, 2006

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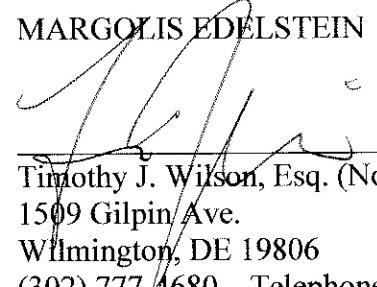
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**CERTIFICATE OF SERVICE**

I, Timothy J. Wilson, Esq., hereby certify that on July 13, 2006, I electronically filed a true and correct copy of the foregoing *Appendix to Plaintiff's Opening Brief in Support of Plaintiff's Motion for Partial Summary Judgment* with the Clerk of the Court using CM/ECF, which will send notification of such to the following counsel of record, and further that I caused a copy of same to be delivered to the following counsel of record:

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

RICHARD WILCOXON, )  
                        )  
Plaintiff,         )  
                        ) Civil Action  
v.                    ) No. 05-524-SLR  
                        )  
RED CLAY CONSOLIDATED SCHOOL )  
DISTRICT BOARD OF EDUCATION, )  
and JANAY FREEBERRY,        )  
                        )  
Defendants.         )

Deposition of RICHARD WILCOXON taken pursuant to notice at the law offices of Young, Conaway, Stargatt & Taylor, 1000 West Street, Wilmington, Delaware, beginning at 9:05 a.m. on Thursday, May 4, 2006, before Eleanor J. Schwandt, Registered Merit Reporter and Notary Public.

APPEARANCES:

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CHRISTINE SMITH  
DIANE DUNMON  
JANAY FREEBERRY

WILCOX & FETZER  
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A-0001



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COPY

1

RICHARD WILCOXON,

2

the witness herein, having first been  
duly sworn on oath, was examined and  
testified as follows:

5

EXAMINATION

6

BY MR. WILLOUGHBY:

7

Q. Good morning.

8

A. Good morning.

9

Q. My name is Barry Willoughby. I represent the defendants in this lawsuit you filed, Red Clay School District and Janay Freebery, who is here today. I will be taking your deposition today. I'll be asking you a series of questions. You will be responding to those questions. If you don't hear or understand a question, tell me and I'll either repeat it or rephrase it, okay?

16

A. All right.

17

Q. You understand you are under oath?

18

A. Yes.

19

Q. And you know lying under oath is perjury?

20

A. Yes.

21

Q. And do you know Janet Basara?

22

A. Yes.

23

Q. Do you know Frank Rumford?

24

A. Yes.



Richard Wilcoxon

3

1 Q. Do you know Janay Freebery?

2 A. Yes.

3 Q. Do you know Bruce Hammond?

4 A. Hammond?

5 Q. Yes. Hannah?

6 A. Hannah, yes.

7 Q. Do you know Rebecca Perse?

8 A. Yes.

9 Q. Do you know Sean Furilla?

10 A. Yes.

11 Q. Do you know Cindy Falgowski?

12 A. Yes.

13 Q. So you are personally acquainted with all those  
14 people?

15 A. Yes.

16 Q. And you've had conversations with them at various  
17 times?

18 A. Yes.

19 Q. And do you know who Signe Wilcoxon is?

20 A. Yes.

21 Q. Who is that?

22 A. My ex-wife.

23 Q. When was the last time you had a conversation  
24 with any of those people?

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A-0003

Richard Wilcoxon

4

1 A. I talked to my ex-wife to fill out your paperwork  
2 maybe a month or two ago, to get some tax information.

3 Q. And what about the other people?

4 A. I saw Sean Furilla briefly at the YMCA working  
5 out probably about same time, a couple months ago. And I  
6 haven't seen the others in two years, two and a half  
7 years, two years.

8 Q. Have you spoken with any of them about this case  
9 since you filed the lawsuit?

10 A. I spoke, told my ex-wife why I needed the tax  
11 documents you were requesting for this case.

12 Q. Other than that?

13 A. No.

14 Q. Have you spoken with any others since you filed  
15 the lawsuit?

16 A. No.

17 Q. As you know, everything is being taken down by  
18 the court reporter.

19 A. Mm-hmm.

20 Q. So you have got to give audible answers and you  
21 have got to wait for me to finish the question before you  
22 give a response. Okay?

23 A. Okay.

24 Q. And if you need a break, let me know.



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Richard Wilcoxon

5

1 A. Okay.

2 Q. What did you do to prepare for the deposition?

3 A. I met with Mr. Wilson yesterday afternoon. I  
4 reviewed the complaint. I looked over one of the  
5 observations. And I listened to one of the audio tapes.

6 Q. And what kind of audio tape is this?

7 A. This is an audio tape of some of the meetings I  
8 had.

9 Q. You taped meetings?

10 A. Yes, I did.

11 MR. WILLOUGHBY: And has that been produced?

12 MR. WILSON: In our responses we said that  
13 the audio tapes are available for your copying if you  
14 want them.

15 MR. WILLOUGHBY: Well, we request they be  
16 produced immediately.

17 BY MR. WILLOUGHBY:

18 Q. When did you start doing audio tapes of meetings?

19 A. On, I guess first day was December 17th of 2003,  
20 I guess it was. I'm trying to think which year it was.  
21 After documentation was found on the 15th, the 16th I met  
22 with Jan Basara, and I was uncomfortable with how the  
23 meeting went, so I felt very exposed, and I felt like  
24 this whole thing was going to be turned around on to me.



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Richard Wilcoxon

6

1 Q. You thought your job was in jeopardy?

2 A. I was concerned that that could be the direction  
3 it went, yes.

4 Q. All right. So you started making audio tapes at  
5 this point?

6 A. Yes.

7 Q. Did you inform any of the people that you were  
8 taping, that you were making audio tapes?

9 A. No, I did not.

10 Q. So you did that secretly?

11 A. Yes.

12 Q. At that point were you represented by a lawyer?

13 A. No, I was not.

14 Q. When did you first contact a lawyer?

15 A. I first talked to Jeff Taschner of DSEA that  
16 March, I guess it was.

17 Q. March of 2004?

18 A. Was it two -- my last year teaching I guess, 2000  
19 -- yes, 2004.

20 Q. Was he representing you individually or  
21 representing the organization?

22 A. I don't understand.

23 Q. Mr. Taschner, was he representing you  
24 individually or was he representing DSEA?



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A-0006

Richard Wilcoxon

7

1           A. I was talking to him about my case as an  
2 individual. I don't know how you categorize that, if he  
3 was representing me or the union. I don't know how to  
4 answer that question.

5           Q. You started telling me that you began the audio  
6 taping on December 17 of 2003?

7           A. Yes.

8           Q. What other meetings did you audio tape?

9           A. Most of my conversation with Miss Basara.

10          Q. Since, from that time on?

11          A. Yes.

12          Q. And you didn't advise her that you were audio  
13 taping any of those conversations, correct?

14          A. No, I did not.

15          Q. You did not?

16          A. No, I did not.

17          Q. Why didn't you tell her?

18          A. At that point it was more for my comfort, and I  
19 just didn't see, feel a strong need to.

20          Q. Strong need to tell her?

21          A. Yes.

22          Q. You don't think she might want to know?

23          A. I don't know how she would feel.

24          Q. How would you feel if somebody was taping you and



Richard Wilcoxon

8

1 you didn't know it?

2 MR. WILSON: Object to the form.

3 A. I couldn't really answer that. If I have been  
4 taped and I still don't know it, I don't know how to  
5 answer that.

6 Q. Well, if you were taped and you found out about  
7 it later on, that it was done without your knowledge?

8 MR. WILSON: Object to the form.

9 A. I wouldn't -- I don't think it would bother me,  
10 but I don't know. I don't know how to put myself in that  
11 situation. I don't think it would bother me.

12 Q. You don't think it would bother you to be  
13 secretly taped?

14 A. No.

15 Q. Would it bother you if somebody were keeping a  
16 record on you of what your comings and goings were from  
17 school? Would that bother you?

18 A. No.

19 MR. WILSON: Object to the form.

20 Q. So you would be all right with that too?

21 A. Yes.

22 Q. If they were doing that secretly and you worked  
23 with them?

24 MR. WILSON: Objection.



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Richard Wilcoxon

9

1 A. Still not bother me.

2 Q. Wouldn't bother you. It would be fine with you?

3 A. Yes.

4 Q. Would you think that doing any of those things,  
5 taping people secretly, keeping notes secretly, might be  
6 considered disloyal by the people that you were secretly  
7 taping and keeping notes on?

8 A. It might be.

9 Q. All right. Do you remember the dates of the  
10 other audio tapes that you have?

11 A. Not the exact day. I know that I taped the  
12 meeting when Janet Basara gave me the letters, the three  
13 letters to put in my file. I believe it was January, I  
14 want to guess it is the 22nd, but I'm not sure if that's  
15 the exact day.

16 Q. That's after you got back from Hawaii?

17 A. Yes.

18 Q. Now, how many total tapes do you have?

19 A. I believe it is four.

20 Q. Four. And is it more than four conversations or  
21 was it one conversation per tape?

22 A. No, it is more than four conversations.

23 Q. So you just took one, is it a cassette tape?

24 A. Yes.



Richard Wilcoxon

10

1 Q. And you just kept using that over and over again?

2 A. No. I had multiple cassette tapes.

3 Q. But did you just use the tape until you ran it  
4 out and then take another cassette tape?

5 A. Yes, yes, that's correct.

6 Q. Have you erased any of those conversations?

7 A. No.

8 Q. Have you had those conversations transcribed?

9 A. No, I have not.

10 Q. And they are in your lawyer's possession now?

11 A. Yes.

12 Q. Which tape did you listen to when you were  
13 preparing for the deposition?

14 A. I listened to the conversations of December 17th.

15 Q. Any others?

16 A. No, I did not.

17 Q. And was that how you remembered it?

18 A. Yes.

19 Q. What do you remember hearing on the tape when you  
20 listened to it in preparation?

21 A. There is multiple conversations on the tape.

22 Q. I want you to walk me through what your  
23 recollection is of what everybody said.

24 A. Each conversation?

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A-0010

Richard Wilcoxon

11

1 Q. Yes.

2 A. That morning -- on the first conversation was  
3 that morning. I knocked on the door and asked Jan Basara  
4 if I could have the log back.

5 Q. That was the log you were keeping on Janay?

6 A. Yes. She responded, "Yes, I'll get it to you  
7 later."

8 Then next meeting was also that morning.  
9 Miss Basara called me into her office and wanted to talk  
10 to me about all the ways Miss Freebery could find out  
11 that Miss Filer was the one who advised me to keep the  
12 log. The day before Miss Filer and I had approached Mr.  
13 Rumford, because Miss Basara had left, and Miss Filer  
14 made very clear that if Miss Freebery found out that she  
15 was the one who gave me the advice that she would file a  
16 complaint with Mr. Orga because her name should not come  
17 out.

18 Q. Wait a second. Ms. Filer didn't want her name to  
19 come out?

20 A. Yes, to Miss Freebery.

21 Q. And Ms. Filer gave you the advice to start  
22 keeping a log on Ms. Freebery?

23 A. Yes.

24 Q. And she did that at a bar after work?



Richard Wilcoxon

12

1 A. Yes.

2 Q. Go ahead. Tell me what you remember about the  
3 conversation.

4 A. The next one, Miss Basara was telling me the ways  
5 Miss Filer could find out about the -- I'm sorry -- Miss  
6 Freebery could find out that Miss Filer's name was the  
7 person who gave it to me, and she was stating that people  
8 could have seen her go into the cafeteria and pull Mr.  
9 Rumford out, or saw myself and Miss Filer talking to Mr.  
10 Rumford, talking to Mr. Rumford outside the cafeteria,  
11 she could find out that way.

12 In that conversation I asked Miss Basara I  
13 said, "I may be overreacting, I may be reading too much  
14 into this, but both you and Mr. Rumford have come to me  
15 and said we need to have a meeting later that day to see  
16 how Miss Freebery and I could work together for the rest  
17 of this year. You both have stated the rest of this  
18 year. Maybe I'm reading too much into it, but why do you  
19 say it that way?"

20 And her response was, "Well, you are not  
21 tenured, are you?"

22 Q. So at that point you had the belief that she was  
23 going to not renew your employment?

24 A. Yes.



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A-0012

Richard Wilcoxon

13

1 Q. Go ahead.

2 A. And the other conversation I listened to was  
3 after school that day, after the meeting where Miss  
4 Freebery, Mr. Rumford and Miss Basara and I all met. I  
5 went back and talked to Mr. Rumford and Miss Basara and  
6 let them know that I felt very uncomfortable. I think  
7 the words actually I used was I felt sick to my stomach  
8 after Miss Freebery's accusation that I made  
9 inappropriate comments to her, that I was very  
10 uncomfortable with that.

11 And Miss Basara said that I was not in  
12 trouble, none of this was going down in writing. Mr.  
13 Rumford also indicated that he didn't think Miss Freebery  
14 was uncomfortable with anything I said until a log was  
15 found, in that conversation. Those are the conversations  
16 I listened to.

17 Q. What was the next conversation you listened to?

18 A. Those were the three I listened -- those were the  
19 three conversations I listened to to prepare for this.

20 Q. Did you tape record the conversation when Ms.  
21 Freebery was present with Mr. Rumford and Ms. Basara?

22 A. Yes, I did.

23 Q. And what is your recollection of that  
24 conversation?



Richard Wilcoxon

14

1 A. My recollection is in that meeting Miss Freebery  
2 asked me a number of times to tell her who gave me the  
3 advice to keep the log. I declined to give that advice  
4 or to tell her who gave me that advice.

5 I also explained that the log was really  
6 just, was to protect me, because I had heard Miss  
7 Freebery had said that I was difficult to work with, and  
8 I was -- and also protect me in case there was any  
9 problems with the kids, if the kids got hurt when she was  
10 not in the class, present in the class, I felt that that  
11 log would be protection for me as well in those cases.

12 After the fourth time of Miss Freebery  
13 asking me who gave me the advice is when she made the  
14 statement I made inappropriate comments to her and she  
15 wanted to make me aware of that in front of witnesses,  
16 and if it continued she would file a complaint of sexual  
17 harassment.

18 Q. So she said you had made inappropriate remarks?

19 A. Yes.

20 Q. Some of a sexual nature?

21 A. Yes.

22 Q. And if it continued she would file charges?

23 A. Yes.

24 Q. So she didn't say she was filing charges right



Richard Wilcoxon

15

1 then?

2 A. No, she did not.

3 Q. What did you say when she said that to you?

4 A. I was stunned. At first I didn't say anything.

5 Miss Basara said, "I'm sorry that you said  
6 that, Janay. I felt we were making progress in this  
7 meeting."8 And then I made a statement, "I wish you  
9 would have told me if there was something I said that  
10 made you uncomfortable."11 Q. Did you say in words or substance that she had  
12 opened the door to your comments?

13 A. No, I did not.

14 Q. Did you say that in any conversation?

15 A. No, I did not.

16 Q. Did you ever say that you were just kidding --

17 A. No.

18 Q. -- at any point?

19 A. No.

20 Q. Are you saying you never made any inappropriate  
21 remarks to her?22 A. No, I did not make any inappropriate remarks to  
23 her.

24 Q. At any point?

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A-0015

Richard Wilcoxon

16

1 A. No.

2 Q. Do you remember that there was a Christmas party  
3 at the school in December of 2003?

4 A. Christmas party was at Miss Freebery's house.

5 Q. That was afterwards. Was there a function at  
6 school that day?

7 A. There could possibly be. I don't know.

8 Q. Did you get a poinsettia at some point during a  
9 function at school over the holidays that year?

10 A. I don't think so, but possibly. I don't know.

11 We are talking about three years ago. I don't know.

12 Q. You don't recall getting that?

13 A. No, I do not.

14 Q. Do you recall saying in words or substance to  
15 anybody that Janay Freebery was the closest thing to a  
16 wife and bitch that had you?

17 A. No, I did not.

18 Q. Did you say that to Janet Basara at the party?

19 A. No, never.

20 Q. You never said that?

21 A. No.

22 Q. So if a number of people --

23 A. I would never say that to Miss Basara. I don't  
24 mean to interrupt. I want to clarify. I would never say

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A-0016

Richard Wilcoxon

17

1 something like that to my boss.

2 You said, you asked me if I said it to Miss  
3 Basara. I would never say something like that to my  
4 boss.

5 Q. Did you tell Ms. Basara that you had given the  
6 poinsettia to Janay because she was the closest thing to  
7 a wife and bitch that you had?

8 A. No.

9 Q. And you didn't say that at the party at Janay  
10 Freebery's house that year?

11 A. No.

12 Q. And I went through the whole list of people here  
13 at the beginning of the deposition that you are aware of,  
14 Janay Freebery, Janet Basara, Frank Rumford. If any of  
15 those people say that you made that comment you are  
16 saying that they are not telling the truth?

17 A. I do not recall ever making a comment such as  
18 that. I know I never would make a comment like to Miss  
19 Basara, my boss.

20 Q. What about the others?

21 A. I don't believe I ever made that comment. I  
22 don't believe I ever said that.

23 Q. Well, if they all testify that you did, are you  
24 saying they are not telling the truth?



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A-0017

Richard Wilcoxon

18

1 MR. WILSON: Object to the form.

2 A. I do not recall ever making that comment. I do  
3 not believe I ever said that.

4 Q. Did you have a lot to drink at the Christmas  
5 party --

6 A. No, I did not.

7 Q. Let me finish the question.

8 A. I'm sorry.

9 Q. -- at Miss Freebery's house?

10 A. No, I did not.

11 Q. Were you one of the last people to leave?

12 A. I don't think. I don't think so. I might have  
13 been.

14 Q. And you are saying at no point did you say in  
15 words or substance to Janet Basara that Janay Freebery  
16 was the closest thing to a wife and bitch that you had --

17 MR. WILSON: Object to the form.

18 Q. -- so you are giving her the poinsettia?

19 MR. WILSON: He has answered the question  
20 numerous time.

21 A. I said I would never have said it to Miss Basara.

22 Q. So you deny that?

23 A. Yes.

24 Q. You likewise deny saying that in the presence of



Richard Wilcoxon

19

1 Cindy Falgowski?

2 A. I don't believe I ever said that. I don't  
3 remember ever making remarks like that.

4 Q. Do you deny saying that in the presence of  
5 Rebecca Perse?

6 A. Again, the same thing.

7 Q. Do you remember Rebecca Perse telling you at any  
8 point that you had made inappropriate comments in her  
9 presence?

10 A. No, she never did.

11 Q. You don't remember that either?

12 A. No, she never did.

13 Q. You are saying it didn't happen?

14 A. No. No one has ever said I made inappropriate  
15 comments.

16 Q. Do you remember Sean Furilla, saying in front of  
17 him in words or substance that Janay Freebery is the  
18 closest thing to a wife or bitch that you have?

19 A. No, I do not.

20 Q. Do you remember him saying to you that that was  
21 an inappropriate comment?

22 A. He never made a comment, again, that that was  
23 inappropriate. No one has ever said I made an  
24 inappropriate comment.



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A-0019

Richard Wilcoxon

20

1 Q. Well, you were written up for making  
2 inappropriate comments, correct?

3 A. That was because of the accusation made by Miss  
4 Freebery at the meeting. I'm sorry. I meant no one has  
5 ever made that accusation other than Miss Freebery at  
6 that meeting.

7 Q. All right. Did you ever make comments to Miss  
8 Freebery about her dating any of her boyfriends?

9 A. Made comments?

10 Q. Did you ever question her about it or make any  
11 reference to any of her dates?

12 A. No.

13 Q. Never?

14 A. I do not believe so.

15 Q. And you know Bruce Hannah, you said?

16 A. Yes.

17 Q. Did you ever make any comment to him, quote,  
18 congratulating him on getting Miss Freebery pregnant?

19 A. No, I did not.

20 Q. That's a lie too?

21 A. I never made that comments.

22 Q. And you never asked Miss Freebery about her  
23 dating of Mr. Hannah?

24 A. No.



Richard Wilcoxon

21

1 Q. You never asked --

2 A. I may have asked her, "How is it going," or  
3 whatever. Casual conversation. I never asked her --

4 Q. Did you ever ask her if she had sex with him yet?

5 A. No.

6 Q. Did you ever ask her about dating someone else as  
7 well as Mr. Hannah and whether or not she was teasing  
8 them, or words to that effect?

9 A. No.

10 Q. Never made any such comments?

11 A. No.

12 Q. So anybody who says they heard you say that is  
13 not telling the truth?

14 A. That's correct.

15 Q. You didn't record any of the conversations other  
16 than the ones you described?

17 A. My conversations with Miss Basara were recorded,  
18 so there is other conversation with Miss Basara  
19 throughout the year that I had recorded.

20 Q. Do you remember what your first comments to Miss  
21 Freebery were when you returned for the start of the  
22 2003-2004 school year?

23 A. My first comments to her?

24 Q. Yes.



Richard Wilcoxon

22

1 A. No.

2 Q. Do you remember asking her if she had sex with  
3 Bruce Hannah yet?

4 A. No.

5 Q. You didn't say that?

6 A. No.

7 Q. Now, you were socializing with a group of  
8 teachers called the Insubordinates; is that correct?

9 A. No.

10 Q. You weren't?

11 A. No. There is not a group of teachers that were  
12 called that. We didn't call ourselves insubordinates.  
13 There was a group of teachers I socialized with.

14 Q. You didn't call yourselves the Insubordinates?

15 A. No.

16 Q. Okay.

17 A. Only term I heard referred to is the Exiles.

18 Q. The Exiles?

19 A. That's the only term I ever heard it referred to.  
20 And I didn't use that term. That was used by another  
21 person who is a part of the group. I never referred to  
22 it as the Insubordinates.

23 (Wilcoxon Deposition Exhibit 1 was marked  
24 for identification.)



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A-0022

Richard Wilcoxon

23

1 Q. I've handed you what has been marked as  
2 Exhibit 1. Do you recognize that document?

3 A. I don't recognize it. It doesn't mean I didn't  
4 get it.

5 Q. Well, it is an e-mail, correct?

6 A. Yes.

7 Q. You are one of the recipients, correct?

8 A. Yes.

9 Q. And can you read, it says, "Subject: Meeting -  
10 Farewell," can you read the document after that?

11 A. Do you want me to read it out loud?

12 Q. Yes.

13 A. "The 'meeting' of the Insubordinates is being  
14 advertised as starting around 6 p.m. on Tuesday due to  
15 the schedule of one of the schedulers."

16 Q. Hold on one second. At the top it says addressed  
17 to "Fellow Insubordinates," correct?

18 A. Yes.

19 Q. You are telling us you never heard that term  
20 before?

21 A. I never referred to it and the people who I'm  
22 close to in the group never referred to it. I mean,  
23 there is one person in the group refers to it as the  
24 Exiles. I never had a name for the group. It is just a



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A-0023

Richard Wilcoxon

24

1 group of friends.

2 Q. And the people on the "to" line, are they the  
3 group of friends you are referring to?

4 A. Yes.

5 Q. Includes Linda Filer?

6 A. Yes.

7 Q. Okay. Why don't you keep reading the e-mail?

8 A. "However, Fellow Insubordinates, in keeping with  
9 our attitudes and behaviors, the meeting can begin  
10 without him. We can perform such duties as begin  
11 drinking, terrorizing the neighborhood, begin drinking,  
12 writing names in snow" --

13 Q. Slow down.

14 A. "Write names in the snow, begin drinking" --

15 Q. Read slower, please.

16 A. "Begin drinking, eating munchies, and continue  
17 drinking. I should have the refrigerator cleared out of  
18 unnecessary items (such as my food) so that you can put  
19 your beer supply on ice by 4:30 or so. We will just  
20 beginning the honoring without him."

21 Q. Do you know who the person who is being referred  
22 to for the "Special Meeting - Farewell" is?

23 A. No, I don't.

24 Q. Did you attend this farewell meeting?

**W&F**

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A-0024

Richard Wilcoxon

25

1 A. I might have. I couldn't tell you, to be honest.

2 Q. Do you know who the message is from?

3 A. Yes, Marilyn, I can't think of her last name.

4 Q. And this was the group of people that you  
5 socialized with at work at Skyline?

6 A. Some of them are, yes.

7 Q. Did you frequently go out for drinks after work?

8 A. About every other Friday.

9 Q. And was it one of those Friday meetings that  
10 Linda Filer said to you that you should keep a book on  
11 Janay Freebery?

12 A. I don't know if it was then or not. It was at a  
13 time I was talking to Linda Filer about --

14 Q. You told me earlier it was at a bar, earlier in  
15 this deposition. So you are correcting that now? You  
16 are saying it wasn't at a bar?

17 A. I don't know where it was.

18 Q. So you don't remember where it was?

19 A. No.

20 Q. Could it have been at a bar?

21 A. It could have been. It very well could have  
22 been.

23 Q. Who else was present when that conversation took  
24 place?

**W&F**

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A-0025

Richard Wilcoxon

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1 A. Tom Karpinski.

2 Q. Who else?

3 A. I don't recall.

4 Q. Were there others present?

5 A. I don't recall. Those were the two that were  
6 talking to me about it. There may have been others  
7 around. Those were the two I was having the conversation  
8 with.

9 Q. Tell me how it came up that Ms. Filer said you  
10 should start keeping a book on Ms. Freebery.

11 A. I had said something about Ms. Freebery leaving  
12 the class and me having to watch the whole group and that  
13 I was concerned about the large numbers, and I don't know  
14 Miss Freebery's students as well as my students as far as  
15 disciplining and such issues, and Miss Filer said, "Maybe  
16 you should start writing down when she leaves."

17 Q. Did she say why?

18 A. She felt that if something happened to the kids,  
19 the students while Miss Freebery was out, that could help  
20 protect me in showing that Miss Freebery was not present  
21 to watch her kids.

22 Q. I thought there was some conversation about you  
23 hearing that Miss Freebery said you were difficult to  
24 work with?



Richard Wilcoxon

27

1           A. That happened much later. The initial  
2 conversation I had with Miss Filer about, about the log,  
3 the first time she brought it up was actually my first  
4 year at Skyline.

5           Q. When was that?

6           A. 2002-2003, so it would have been that spring.

7           Q. Do you remember the month?

8           A. It would have been late in the spring.

9           Q. Did you start keeping a log then?

10          A. No, I did not. I felt Miss Freebery was just  
11 getting back into teaching after being out, and she was  
12 learning to cope with being a new mother and a single  
13 mother, and I had to wait and see how next year went.

14          Q. And did you have anymore conversations between  
15 that conversation with Ms. Filer and when you had another  
16 conversation with her in the fall?

17          A. I probably had a number of conversations with  
18 her.

19          Q. About keeping the so-called log?

20          A. Not about keeping the log, no.

21          Q. Any conversation with Ms. Filer from that time  
22 until the following, beginning of the following school  
23 year concerning Janay Freebery?

24          A. I don't believe so.

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A-0027

Richard Wilcoxon

28

1 Q. Tell me about the conversations in the second  
2 school year at Skyline when Ms. Filer suggested that you  
3 keep the log on Ms. Freebery.

4 A. She came to me and said that she was just getting  
5 out of a meeting. I don't know what meeting it was for.  
6 I don't remember at this time. And Miss Freebery made a  
7 comment to the whole group that I was difficult to work  
8 with, and that Mr. Rumford was part of that group as  
9 well.

10 And so at that point I thought, I said,  
11 "Well, if I'm difficult to work with, I'm covering her  
12 classes when she is late, I'm covering when she is out,  
13 how can I be considered difficult to work with." She  
14 said, "That's why you should keep the log." And so,  
15 again, that's when I did start keeping the log.

16 Q. Did you go to Ms. Freebery and tell her you heard  
17 she made these comments?

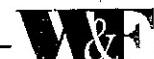
18 A. No, I did not.

19 Q. So you just decided to secretly keep the log?

20 MR. WILSON: Object to the form.

21 A. Yes.

22 Q. And that log was for your own use, correct? It  
23 wasn't something you were taking to the district? It was  
24 for your own protection, as you said?



Richard Wilcoxon

29

1           A. Well, I would take it to the district if things  
2 happened. As Miss Freebery complained to Mr. Rumford, if  
3 it went to my supervisors, her and Miss Basara, and my  
4 job became in jeopardy because she said I was difficult  
5 to work with or something happened to the kids and I was  
6 poised in that situation, then it would be something I  
7 would share with the district.

8           Q. Only in those circumstances would you bring it to  
9 somebody's attention in the district?

10          A. Yes.

11          Q. Did you tell somebody, any of the administrators  
12 or principals that you were keeping it so you would have  
13 leverage?

14          A. No.

15          Q. You never made that kind of remark either?

16          A. No.

17          Q. When was it you started keeping the log?

18          A. In November.

19          Q. Of what year?

20          A. I believe it was 2003. Yes, 2003.

21          Q. So how long was the conversation, how long before  
22 that was the conversation with Ms. Filer at the bar where  
23 she suggested you start taking, keeping this log?

24          A. It was the previous spring, so I guess six



Richard Wilcoxon

30

1 months. I don't know. The spring.

2 Q. How long was the second conversation in that year  
3 where she told you, Ms. Filer told you that Ms. Freebery  
4 said you were difficult to work with? What was the time  
5 frame between that and when you started keeping a log?

6 A. Maybe a week.

7 Q. Did you tape any conversations with April at the  
8 school prior to December 17, 2003?

9 A. No.

10 (Wilcoxon Deposition Exhibit 2 was marked  
11 for identification.)

12 MR. WILSON: Was this Wilcoxon 1? Was this  
13 entered as an exhibit?

14 MR. WILLOUGHBY: Yes.

15 BY MR. WILLOUGHBY:

16 Q. Let me ask you to look at Exhibit 2 and ask you  
17 if you can identify that.

18 A. Yes, that's the log I kept.

19 Q. Now, was this on a notebook, basically?

20 A. A note pad, yes.

21 Q. A note pad. And tell me what your procedure was  
22 in creating this log, what you did in terms of recording  
23 what Ms. Freebery was doing.

24 A. What was my procedure?



Richard Wilcoxon

31

1 Q. Right. Did you write in it every day? Did you  
2 go back and recreate it all at once? Did you --

3 A. Above where the line is --

4 MR. WILSON: Wait until he is done.

5 A. I'm sorry. I apologize.

6 Q. Go ahead. You said "above where the line is"?

7 A. I went back. That's why I said it was  
8 approximately September 8th. I don't know the exact date  
9 of that. I went back and recreated it.

10 Q. Okay. So what line are you referring to?

11 A. There is a pen-drawn line right above November  
12 13th.

13 Q. All right. So basically the top half of the page  
14 on the first page --

15 A. Yes.

16 Q. -- which is C00759, for Bates number, you  
17 recreated that?

18 A. Yes.

19 Q. And then below that you were keeping things  
20 contemporaneously?

21 A. Yes.

22 Q. Looking at the first entry below the line of  
23 November 13, that looks like that was squeezed in there  
24 afterwards. Is that correct?

---

**W&F**

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A-0031

Richard Wilcoxon

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1 A. It does look like it was squeezed in.

2 Q. Did you write it afterwards?

3 A. I do not believe so. It may be something where I  
4 started on the 14th, was when I started keeping it, and I  
5 thought of the 13th, I wrote down so --

6 MR. WILLOUGHBY: Do you have the original  
7 here?

8 MR. WILSON: No, this isn't the original.  
9 It is a better copy than we produced, though.

10 BY MR. WILLOUGHBY:

11 Q. So then after you started keeping the log did you  
12 make entries every day?

13 A. Just when I saw things.

14 Q. Did you make it the same day?

15 A. Yes.

16 Q. As whatever you observed something you thought  
17 was something that should be recorded in the log, you  
18 wrote it down that day?

19 A. I believe so, yes.

20 Q. Did you do that at the end of the day? Did you  
21 do it in a working period? When did you do it?

22 A. Probably different times of the day.

23 Q. Did you have a regular process you used to keep  
24 these records?



Richard Wilcoxon

33

1       A. No, I did not. Sometimes I had the log with me  
2 so it was something -- in my plan book, it was something  
3 I could easily jot down. Sometimes it was left in my  
4 locker room, I had to go back at the end of the day.

5       Q. Did you leave it in your office, in the locker  
6 room?

7       A. Yes.

8       Q. Did you lock it up any place?

9       A. It was locked inside the office. The door to the  
10 office is locked.

11      Q. Did you put it in a cabinet any place and lock it  
12 up?

13      A. No. I had no cabinets I had keys to.

14      Q. Did you take it home with you at any point?

15      A. I probably did, inside my grade book. I probably  
16 walked out with the grade book as well.

17      Q. Did other people have access to your office,  
18 substitutes, administrators, etcetera?

19      A. Substitutes did not. Administrators have keys to  
20 everybody's office.

21      Q. If a substitute came in, they wouldn't have  
22 access to the office?

23      A. No, they wouldn't.

24      Q. How were they going to get lesson plans, things

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A-0033

Richard Wilcoxon

34

1 like that, to fill in when you were out?

2 A. When I was out, if I was out sick there is -- am  
3 I talking too fast for you?

4                   When I was out, there was emergency plans  
5 kept in the main office for those times. If I knew I was  
6 going to be out I left lesson plans in my mailbox.

7 Q. Your mailbox in the office?

8 A. Yes.

9 Q. Tell me what the protocol was at Skyline for  
10 having emergency plans available in the event that a  
11 teacher was out unexpectedly due to illness or otherwise.

12 A. We left three days' emergency lesson plans in a  
13 file cabinet in the main office. We turned them in to a  
14 secretary to check our names off and then she put them in  
15 the file cabinets for us.

16 Q. And that was a requirement of all teachers?

17 A. Yes.

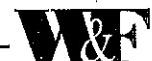
18 Q. And what is a bell schedule?

19 A. Bell schedule is when the classes are dismissed  
20 and the next class will begin.

21 Q. Were you supposed to keep that available for a  
22 substitute as well?

23 A. It is part of the emergency lesson plans.

24 Q. So that was part of what was supposed to be in



Richard Wilcoxon

35

1 the file with the lesson plans?

2 A. Yes.

3 Q. Now, those lesson plans when you were at Skyline,  
4 they were basically copies of plans that Mr. Rumford had  
5 done, correct?

6 A. No, that's not correct.

7 Q. Did you write your own plans?

8 A. Yes.

9 Q. You are saying the plans that were on file were  
10 plans you wrote yourself?

11 A. Yes.

12 Q. So you didn't get a notebook --

13 A. I -- oh, yes, for emergency plans, yes, they were  
14 my writing.

15 Q. Did you get a notebook from Mr. Rumford with his  
16 lesson plan book when you went to work at Skyline?

17 A. Not for emergency plans.

18 Q. Okay. Well, tell me about that notebook first.

19 A. When I arrived at Skyline they were about ready  
20 to start health lessons, because I didn't start until  
21 October. Mr. Rumford gave me his lesson plan books and  
22 said, "These are the lessons we use for health. All the  
23 work sheets are locked in the cabinet inside the health  
24 room. This is the key."



Richard Wilcoxon

36

1 Q. And did you use that as, basically, your lesson  
2 plans for the two years you were at Skyline?

3 A. For health we team taught, so all lesson plans  
4 were used by both Miss Freebery and myself, or in that  
5 case it was the long-term sub, who I do not remember her  
6 name.

7 Q. After you stopped teaching with Ms. Freebery did  
8 you continue to use those plans?

9 A. Yes, I did.

10 Q. Mr. Rumford's plans?

11 A. Yes.

12 Q. Now, you said you had other emergency plans that  
13 you wrote?

14 A. Emergency plans were separate from lesson plans.

15 Q. And tell me about what the difference is.

16 A. Emergency plans are locked on file and they are  
17 only to be used when you are out. The lesson plans are  
18 lesson plans we use every day of teaching. Every day we  
19 should have a lesson plan.

20 Q. Well, were the emergency plans to tell the  
21 substitute what to teach?

22 A. Yes.

23 Q. And are you saying you wrote those yourself?

24 A. Yes.

W&F

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A-0036

Richard Wilcoxon

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1 Q. And you gave them to the secretary?

2 A. Secretary checked off everybody's name as they  
3 turned them in. The office kept a record of that.

4 Q. Were there any other plans that you kept, you  
5 gave the office for emergency uses in addition to those  
6 ones you described?

7 A. When I got written up and the letter said that my  
8 emergency lesson plans did not contain a bell schedule or  
9 class list, I asked to see my emergency lesson plans to  
10 show them that it did contain those things, and they told  
11 me they no longer could find them, so I had to write new  
12 emergency plans.

13 Q. Did they tell you that they couldn't find them or  
14 they weren't there?

15 A. They told me that they no longer could find them.

16 Q. Who told you that?

17 A. Miss Basara.

18 Q. When did she tell you that?

19 A. When I got written up, the meeting. I think it  
20 was January 22nd. Again, I don't know the exact date.

21 Q. Did you record that conversation?

22 A. Yes, I did.

23 Q. And you didn't tell her you were recording it?

24 A. That's correct.



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A-0037

Richard Wilcoxon

38

1 Q. All right. Let's go back to your log here.

2 Let's start at the top line, and tell me what your log  
3 says here. It says, "Log about Janay."

4 A. Yes. She inappropriately attacked Jahlil Aleil  
5 for inappropriate --

6 Q. Hold it. Slow down. It says, "Log about Janay,"  
7 parens. Read after that.

8 A. Oh, at the top. I apologize. "Advised to keep  
9 after Janay made comments saying I was difficult to work  
10 with."

11 Q. So that was the reason you kept it, because she  
12 had said you were difficult to work with?

13 A. Yes.

14 Q. Then it says "School year 2003-04"?

15 A. Yes.

16 Q. Read what it says under that beginning "In  
17 September."

18 A. Again, it says approximately the 8th, "Janay was  
19 so late to school she missed her 1st 2 classes, 1st  
20 planning period and half of the 3rd class."

21 Q. Slow down.

22 A. I apologize. "She never called out so I was  
23 alone with the 1st two classes, the office called a sub  
24 in for her. When she arrived, she threw the sub out and



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A-0038

Richard Wilcoxon

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1 complained to the office that she should not be charged a  
2 day since she did not call out."

3 Q. Did you ever talk with Ms. Freebery about that  
4 incident?

5 A. No.

6 Q. What is the next entry?

7 A. "Mid-September - Janay was late and missed her  
8 1st class. Her girls stayed in the locker room  
9 unsupervised. Janay arrived the start of her 2nd class."

10 Q. And you don't know what date that was?

11 A. No, I don't. I was outside with my kids, and a  
12 girl came outside and said, "What are you doing?" And I  
13 said, "We are finishing up soccer. Why aren't you with  
14 your class?" And she said, "Miss Freebery isn't there."  
15 And I said, "You need to go up to the office and let the  
16 office know."

17 Q. You don't remember the date?

18 A. No, I don't.

19 Q. Did you ever have a conversation with Miss  
20 Freebery about that?

21 A. No, I did not. I don't think.

22 Q. Prior to the December 17 conversation with Ms.  
23 Basara, did you ever tell her about these incidents?

24 A. No, I did not.



Richard Wilcoxon

40

1 Q. On the left-hand side it says "General"?

2 A. Yes.

3 Q. And read to me what that says.

4 A. "Bruce in class almost daily. Leaves often  
5 without signing out. Late" --

6 Q. Is that referring to Ms. Freebery?

7 A. Yes. All this is referring to Miss Freebery.

8 "Late daily. Did not pick student leaders  
9 until early November saying 'I have too much to do to  
10 worry about that.'

11 "Left intramurals to pick up daughter and  
12 then return. Paid for a whole time," and put a question  
13 mark because I don't know.

14 Q. So these were things you were recreating --

15 A. Yes. I am sorry.

16 Q. -- that you thought Ms. Freebery had done wrong,  
17 that you could use in the event you got in trouble?

18 A. I was writing down to remember them in case the  
19 situation arose, yes.

20 Q. Now, going below the line, this is where you are  
21 now keeping it contemporaneously, correct?

22 A. Mm-hmm, yes.

23 Q. Do you have the original of this document some  
24 place?



Richard Wilcoxon

41

1 A. Yes.

2 Q. And who has it?

3 MR. WILSON: I do.

4 MR. WILLOUGHBY: You don't have it with you?

5 MR. WILSON: No.

6 MR. WILLOUGHBY: I would like to see the  
7 original at some point.

8 MR. WILSON: Okay.

9 BY MR. WILLOUGHBY:

10 Q. This is a photocopy?

11 A. Yes.

12 Q. Are the writings in different color ink on the  
13 original? Different color pens used?

14 A. I couldn't tell you. Probably, but I couldn't  
15 tell you for sure.

16 Q. When was the last time you looked at it before  
17 today?

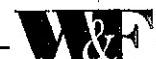
18 A. I haven't looked at it in a long time.

19 Q. Starting with November 13, what does that say?

20 A. "November 13 - Verbally attacked Jahlil Akil for  
21 inappropriate question."

22 Q. And what does that mean? What is that referring  
23 to?

24 A. I can't remember the exact details other than



Richard Wilcoxon

42

1       Jahilil probably asking an inappropriate question, and I  
2       felt Miss Freebery was overly harsh in her response.

3       Q.     Did you tell Ms. Freebery that?

4       A.     I don't think so.

5       Q.     Now, this was your second year at Skyline,  
6       correct?

7       A.     Yes.

8       Q.     And how long had you been teaching at that point?

9       A.     Overall?

10      Q.     Yes.

11      A.     I had spent three years at Lake Forest School  
12     District and up until the October 4, I came to Skyline.  
13     I was at Colonial? Was it Colonial? George Reed Middle  
14     School.

15      Q.     So how many years is that?

16      A.     Up to this point?

17      Q.     Yes.

18      A.     That was my fifth year.

19      Q.     How long had Ms. Freebery been teaching?

20      A.     I don't know. I believe nine.

21      Q.     And she was tenured?

22      A.     Yes.

23      Q.     And she had been teaching that class for a number  
24     of years with Mr. Rumford?



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A-0042

Richard Wilcoxon

43

1 A. Yes, that's correct.

2 Q. All right. Let's go back. So November 14 says  
3 what?

4 A. "Left a health class 20 minutes early saying she  
5 'needed to work on her master's thesis,' leaving me with  
6 all the kids."

7 Q. What did you say when that happened? Did you say  
8 anything to her about that? Did you have a conversation?

9 A. I don't recall.

10 Q. So you are saying she just told you she was  
11 leaving and you didn't agree to continue with the class?

12 A. Well, obviously, I was going to continue with the  
13 class.

14 Q. Did you agree that she could leave early and you  
15 would cover the class?

16 A. I may have said that -- I don't recall.

17 Q. You don't recall?

18 A. I may have said that, I don't recall.

19 Q. But you wrote it down here as something she did  
20 inappropriately?

21 A. Yes.

22 Q. Did you tell her you thought it was  
23 inappropriate?

24 A. I don't think so.



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A-0043

Richard Wilcoxon

44

1 Q. Okay. November 17, what does that say?

2 A. "Came into the In-service 15 minutes late."

3 Q. What is that next to it in parens?

4 A. It says "tally (15)."

5 Q. What does that mean?

6 A. I started keeping a tally of how late she was.

7 Q. So you started keeping a record of how many  
8 minutes late she was?

9 A. Yes, that's correct.

10 Q. And did you tell Ms. Freebery that she was late  
11 that day?

12 A. I don't know if I told her that day, no.

13 Q. Did you tell Ms. Basara about any of these  
14 conversations prior to the December 17 meeting?

15 A. No, I did not.

16 Q. All right. What does the November 19 entry say?

17 A. "Left before our last class. Started to go to  
18 bathroom. Did not return until 2:25. Said she was  
19 talking to Becky Perse in the hall."

20 Q. Did you mention to Ms. Freebery you thought there  
21 was something inappropriate about this?

22 A. I'm sure I did.

23 Q. At the time?

24 A. Yes.



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A-0044

Richard Wilcoxon

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1 Q. What do you remember saying?

2 A. I could not tell you word for word. I'm sure I  
3 said something about, where were you, it shouldn't take  
4 that long.

5 Q. Do you remember that or are you saying you are  
6 sure?

7 A. I'm sure I talked to her about it. I do not  
8 remember exactly what I would have said.

9 Q. Well, do you remember, do you have a conscious  
10 recollection of saying something?

11 A. Yes.

12 Q. And what is --

13 A. I believe I did.

14 Q. Well, that's a different thing, whether you have  
15 a conscious recollection or you believe you would have.  
16 I'm asking if you have a conscious recollection of saying  
17 something.

18 A. No, I don't.

19 Q. So you think you would have, but you don't really  
20 remember?

21 A. Correct.

22 Q. Let's go to the next entry, November 24.

23 A. "Late - arrived at 8:05. Missing student leaders  
24 and volleyball sign-ups."



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1 Q. What is in parens there?

2 A. "50."

3 Q. That's what you are saying, she was 50 minutes  
4 late?

5 A. Added with the 15 minutes previously. I kept a  
6 running tally.

7 Q. So what you are doing here is you are adding the  
8 total from the prior days --

9 A. Yes.

10 Q. -- to get a total running tally --

11 A. Yes.

12 Q. -- of how many minutes late you think she was?

13 A. Yes.

14 Q. So your running tally at that point was 50  
15 minutes?

16 A. Yes.

17 Q. All right. What is the next entry?

18 A. "Bruce Hannah came in during 1st class, at  
19 breakfast in front of kids. Yelled at kids while TV was  
20 being hooked up. She was demeaning them (witnessed by  
21 Mike Ruth.)"

22 Q. Mike who?

23 A. Ruth.

24 Q. Who is he?



Richard Wilcoxon

47

1       A.    He was another teacher within the building. I  
2 was watching his homeroom while he was hooking up AV in  
3 the gymnasium.

4       Q.    Were you present when this happened?

5       A.    No, I was not.

6       Q.    How did you find out about this alleged incident?

7       A.    When Mr. Ruth came back to his homeroom, so I  
8 could go back to the gymnasium, he mentioned it.

9       Q.    So you have no firsthand knowledge of it?

10      A.    No, I do not.

11      Q.    Now, it looks like something is crossed out. It  
12 is beneath Bruce Hannah. It says "left building during"  
13 something? What does that say?

14      A.    "Left building during" -- I don't know.

15      Q.    Is that a different entry you were going to make  
16 but you crossed out?

17      A.    I think I probably said, "left building during  
18 planning period," would be my guess, if I said that.

19      Q.    You don't know what you were --

20      A.    I don't know for sure, no. I'm making a guess.  
21 If you are asking me what I think I wrote, that's what I  
22 think.

23      Q.    And then you crossed it out?

24      A.    The reason I say that is because I look on the

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1 next page, it says, "Left building to go to the bank  
2 during planning," on the top of the next page. I'm  
3 thinking when I wrote this down, the Bruce situation  
4 happened earlier, and left building was later that same  
5 day.

6 Q. So you crossed out that entry you started to make  
7 so you could keep the entries in order?

8 A. Yes.

9 Q. Let's go to the next page, which is Bates  
10 numbered C00760. And start at the top of the page, tell  
11 me the date and what the entries are there.

12 A. Says "November 24th continued. Left building to  
13 go to the bank during planning (did not sign out) did not  
14 return until 10:45 (22 minutes after class started.)"

15 Q. Is your running total in here somewhere?

16 A. I don't see it on that.

17 Q. Did you say anything to Ms. Freebery about that?

18 A. I do not recall.

19 Q. Is there any reason why she couldn't leave the  
20 building during her planning period?

21 A. No.

22 Q. Didn't you leave the building frequently during  
23 your planning period?

24 A. Yes.

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